

**JENNIFER L. COON**  
California State Bar No. 203913  
**FEDERAL DEFENDERS OF SAN DIEGO, INC.**  
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Attorneys for Mr. Hernandez-Rivera

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
(HONORABLE M. JAMES LORENZ)

UNITED STATES OF AMERICA,

Plaintiff,

v.

**RIGOBERTO HERNANDEZ-RIVERA,**

Defendant.

CASE NO. 08CR0719-L

DATE: July 21, 2008

TIME: 2:00 p.m.

**DECLARATION OF ESTHER GARIBAY IN  
SUPPORT OF DEFENDANT'S MOTION TO  
DISMISS THE INDICTMENT DUE TO  
INVALID DEPORTATION**

I, Esther Garibay, declare under penalty of perjury:

1. I make this declaration in support of a motion of Rigoberto Hernandez-Rivera filed by his attorney.

2. I am a U.S. citizen, born in the United States. Attached as Exhibit A is a true and correct copy of my birth certificate.

3. I have been in a common-law relationship with Mr. Hernandez since late 2004. We began dating approximately a year earlier, in late 2003.

3. Mr. Hernandez and I have two children together: Emmanuel Rigo Hernandez, age 2 months, born on May 24, 2008, and Abraham Rigo Hernandez, age 1 1/2 years, born on November 13, 2006. In addition, I have two children from a prior relationship: Luis Elijah Garibay ("Elijah"), age 5, and Elizabeth

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1 Garibay, age 15. All four children are U.S. citizens born in the United States. Attached as Exhibit B is a true  
2 and correct copy of birth records for the three younger children.

3 4. Although my two older children are from a prior relationship, Mr. Hernandez has raised them  
4 as his own. My son Elijah has lived with Mr. Hernandez since he was just one year old, calls him "dad," and  
5 has been raised to believe that Mr. Hernandez is his true father. We had planned to have Mr. Hernandez  
6 legally adopt Elijah and to change Elijah's last name to Hernandez. My oldest daughter, Elizabeth, also calls  
7 Mr. Hernandez "dad" and loves him like a father. Before I met Mr. Hernandez, she was a difficult child who  
8 was earning poor grades, frequently ditching school, and having behavioral problems. Due to Mr.  
9 Hernandez's presence and guidance, she is now a straight-A student.

10 5. Mr. Hernandez is a wonderful father to our four children. He does not smoke, drink, or use  
11 drugs. He works hard during the week and then spends his weekends on family activities, such as gardening,  
12 fixing up the house, going to the movies and other family outings, attending church, and spending time with  
13 the children. He is very close to the children and has a great relationship with them. He also helps with the  
14 domestic chores, including yardwork, cleaning, occasional cooking, and taking care of the children.

15 6. Mr. Hernandez is also a good financial provider for the family. Although I worked until  
16 midway through my most recent pregnancy, Mr. Hernandez is the primary breadwinner for the family and was  
17 responsible for paying the household bills. Mr. Hernandez has worked as a foreman and forklift driver for  
18 Continental Pallets since I met him, and to my knowledge he has worked there for the last 10 years. He makes  
19 approximately \$1200 per week depending on how much overtime is available. Attached as Exhibit C is a true  
20 and correct copy of recent paystubs from Continental Pallets.

21 7. In November 2006, Mr. Hernandez and I purchased our first home together at 2195 Marigold  
22 Way, Hemet, CA 92545. The title and mortgage were put solely in Mr. Hernandez's name because I had a  
23 poor credit history, and he was responsible for paying the mortgage of approximately \$1,500 per month.  
24 Attached as Exhibit D are true and correct copies of a recent mortgage bill and notice of default. Mr.  
25 Hernandez and I had also recently purchased a 2007 Ford F150 truck together. Mr. Hernandez was  
26 responsible for paying the vehicle loan payment of approximately \$675 per month. Attached as Exhibit E are  
27 true and correct copies of a recent vehicle loan bill and notice of default.

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1        8.        Since Mr. Hernandez was deported in January 2008, the family has suffered emotionally.  
2 Although he frequently calls and writes letters, our children and I miss him very much. My daughter Elizabeth  
3 was planning to have her quinceñera in March, but she canceled the party because she said that Mr. Hernandez  
4 – her "dad" – would not be there to dance the first song with her. My oldest son, Elijah, has also started to  
5 act up in Mr. Hernandez's absence. In addition, at the time of Mr. Hernandez's deportation, I was  
6 approximately four months pregnant with my baby son. The stress of the deportation caused me to have a  
7 difficult and high-risk pregnancy. I developed anemia and other medical problems, and ultimately had to  
8 deliver the baby by caesarean section. It was very difficult for me to recover from the delivery, and to care  
9 for myself, my infant son, and the other children, without Mr. Hernandez's care and assistance.

10        9.        The deportation also caused our family to suffer financially. Due to my difficult pregnancy  
11 and the need to care for my infant son and other children, I have been unable to work since March. Without  
12 Mr. Hernandez's income, I have been struggling financially and I have been unable to pay for my family's  
13 basic needs. As a result, I was forced to apply for welfare in April. I now receive Aid to Families with  
14 Dependent Children (AFDC) and food stamps, as well as MediCal assistance for the children.

15        10.       Since Mr. Hernandez's deportation, I also have been unable to pay our mortgage. After Mr.  
16 Hernandez's deportation in January, all of our family members and friends pitched in to help me make the  
17 February mortgage payment. However, I have not been able to make any payments since February. About  
18 a week ago, I received a telephone call from the mortgage lender. I was told that the lender would initiate  
19 foreclosure proceedings in approximately three weeks. I have recently begun to pack our family's belongings.  
20 I expect that we will be forced to leave the house soon, and I do not know where we will be able to stay. I  
21 have also been unable to make the payments on our truck for the last several months. I have called the dealer  
22 twice to offer to return the truck, and I expect that it will soon be repossessed.

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1 11. I am in a committed, long-term relationship with Mr. Hernandez and consider him to be my  
2 husband and life partner. At the time of his deportation, we had been planning to legally marry and we were  
3 saving money to hire an immigration lawyer to help him apply for legal status. If I had known that it would  
4 have prevented his deportation, I would have immediately legally married him and petitioned for him to  
5 receive an immediate visa as my spouse.

6 I swear under penalty of perjury that, to the best of my knowledge and memory, the foregoing is true  
7 and correct.

8  
9 DATED: July 16, 2008

  
ESTHER CARIBAY

# EXHIBIT A

**STATE OF CALIFORNIA**  
**CERTIFICATION OF VITAL RECORD**

**County of San Bernardino**  
**Auditor/Controller-Recorder, County Clerk**  
www.sbcounty.gov/acr

STATE BIRTH CERTIFICATE NUMBER		STATE OF CALIFORNIA—DEPARTMENT OF PUBLIC HEALTH		LOCAL REGISTRATION OFFICE AND CERTIFICATE NUMBER	
THIS CHILD	1. NAME OF CHILD—FIRST NAME	2. MIDDLE NAME	3. LAST NAME		
	4. SEX	5. DATE OF BIRTH—MONTH DAY YEAR	6. HOUR		
PLACE OF BIRTH	7. PLACE OF BIRTH—NAME OF HOSPITAL	8. STREET ADDRESS (STREET AND NUMBER OR LOCATION)	9. CITY OR TOWN		
	10. CITY OR TOWN	11. COUNTY	12. BIRTHPLACE (STATE OR FOREIGN COUNTRY)		
MOTHER OF CHILD	13. MAIDEN NAME OF MOTHER—FIRST NAME	14. MIDDLE NAME	15. LAST NAME (COMMON OR MARRIAGE)		
	16. AGE OF MOTHER (AT TIME OF THIS BIRTH)	17. COLOR OR RACE OF MOTHER	18. RESIDENCE OF MOTHER—STREET ADDRESS (STREET AND NUMBER OR LOCATION)		
FATHER OF CHILD	19. NAME OF FATHER—FIRST NAME	20. MIDDLE NAME	21. LAST NAME		
	22. AGE OF FATHER (AT TIME OF THIS BIRTH)	23. COLOR OR RACE OF FATHER	24. PRESENT OR LAST OCCUPATION		
INFORMANT'S CERTIFICATION	I HEREBY CERTIFY THAT I HAVE REVIEWED THE ABOVE STATED INFORMATION AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.		25. SIGNATURE OF OTHER THAN FATHER, SPECIFY		
	26. DATE		27. SIGNATURE OF PHYSICIAN OR OTHER ATTENDING PHYSICIAN—SIGNATURE OR TITLE		
ATTENDANT'S CERTIFICATION	I HEREBY CERTIFY THAT I ATTENDED THIS BIRTH AND THAT THE CHILD WAS BORN ALIVE AT THE HOUR, DATE AND PLACE STATED ABOVE.		28. ADDRESS		
	29. SIGNATURE OF PHYSICIAN OR OTHER ATTENDING PHYSICIAN—SIGNATURE OR TITLE		30. DATE SIGNED BY PHYSICIAN OR OTHER ATTENDING PHYSICIAN		
LOCAL REGISTRAR	31. REQUEST ORIGINATOR FROM		32. LOCAL REGISTRAR—SIGNATURE		
	33. ADDRESS		34. DATE RECEIVED FOR REGISTRATION AT THIS OFFICE		

**FOR OFFICIAL  
GOVERNMENTAL  
USE ONLY**

This is a true and exact reproduction of the document officially registered and placed on file in the Office of the Auditor/Controller-Recorder, County of San Bernardino.

DATE ISSUED **MAR 07 2007**

*Larry Walker*  
**LARRY WALKER**  
Auditor/Controller-Recorder, County Clerk  
San Bernardino County, California

This copy not valid unless prepared on engraved border displaying date, seal and signature of the Auditor/Controller-Recorder.



\*001222318\*

ANY ALTERATION OR ERASURE VOID THIS CERTIFICATE

# **EXHIBIT B**

*Certificate of Birth*  
**Hemet Valley Medical Center**  
*Hemet, California*

*This Certifies that* Emmanuel Rigo Hernandez  
*was born to* Esther Garibay  
*in this Hospital at* 3:39 o'clock pm *on* Saturday  
*the* 24<sup>th</sup> *day of* May *year* 2008




*In Witness Whereof the said Hospital  
has caused this Certificate to be signed  
by its duly authorized officer and its  
Official Seal to be hereunto affixed.*

Annette Greenwood  
*Administrator*

*Attending Physician*



Community Hospital of San Bernardino

 COMMUNITY HOSPITAL OF SAN BERNARDINO  
1805 MEDICAL CENTER DR  
SAN BERNARDINO, CA

1805 Medical Center Drive  
San Bernardino, CA 92411-1214  
11/13/2006 (909) 887-6333 Telephone  
www.chsb.org

OUR MEDICAL RECORDS INDICATE THAT THE FOLLOWING CHILD:

ABRAHAM RIGO HERNANDEZ

WAS BORN IN THIS FACILITY

ON 11/13/2006 AT 1515 HOURS

MOTHER'S MAIDEN NAME: ESTHER - GARIBAY

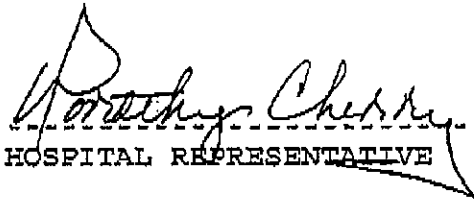
MOTHER'S BIRTH PLACE: CA DOB: 11/09/1971

FATHER'S NAME: RIGOBERTO - HERNANDEZ RIVERA

FATHER'S BIRTH PLACE: MEXICO DOB: 06/18/1970

SEX OF CHILD: MALE

BIRTH ATTENDANT: BERNABE MARINDUQUE, MD

  
HOSPITAL REPRESENTATIVE

A Social Security card for the  
above named child should  
arrive in approximately 4 - 6  
weeks.

208  
A Catholic Healthcare West Company

## STATE OF CALIFORNIA

## CERTIFICATION OF VITAL RECORD

# County of San Bernardino

## Auditor/Controller-Recorder, County Clerk

www.sbcounty.gov/acr

### CERTIFICATE OF LIVE BIRTH

#### STATE OF CALIFORNIA

1200236010880

STATE FILE NUMBER		USE BLACK INK ONLY		LOCAL REGISTRATION DISTRICT AND CERTIFICATE NUMBER	
THIS CHILD	1A NAME OF CHILD - FIRST (GIVEN)	1B MIDDLE	1C LAST (FAMILY)		
	LUIS	ELIJAH	FARIAS		
PLACE OF BIRTH	2 SEX	3A THIS BIRTH SINGLE TWIN ETC	3B IF MULTIPLE THIS CHILD 1ST 2ND ETC	4A DATE OF BIRTH - MM/DD/YYYY	4B HOUR - (24 HOUR CLOCK TIME)
	MALE	SINGLE	-	06/13/2002	2318
FATHER OF CHILD	5A NAME OF FATHER - FIRST (GIVEN)	5B MIDDLE	5C LAST (FAMILY)	6 STATE OF BIRTH	7 DATE OF BIRTH
	-	-	-	CA	UNKNOWN
MOTHER OF CHILD	8A NAME OF MOTHER - FIRST (GIVEN)	8B MIDDLE	8C LAST (FAMILY)	9 STATE OF BIRTH	10 DATE OF BIRTH
	ESTHER	-	CARIBAY	CA	11/09/1971
INFORMANT CERTIFICATION	12A I CERTIFY THAT I HAVE REVIEWED THE STATE INFORMATION AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE		12B SIGNATURE OF OTHER INFORMANT		12C RELATIONSHIP TO CHILD
	<i>[Signature]</i>		<i>[Signature]</i>		MOTHER
CERTIFICATION OF BIRTH	13A I CERTIFY THAT THE CHILD WAS BORN AT THE DATE, HOUR AND PLACE STATED		13B SIGNATURE OF CERTIFIER - PEOPLE OR TITLE		13C DATE SIGNED
	<i>[Signature]</i>		<i>[Signature]</i>		06/19/2002
LOCAL REGISTRAR	14 TYPED NAME, TITLE AND ADDRESS OF ATTENDANT			15 TYPED NAME AND TITLE OF CERTIFIER IF OTHER THAN ATTENDANT	
	G. SMALL, MD, 639B N. MC VERNON, SUITE 300, SAN BERNARDINO			H. PRUITT, BIRTH RECORDER	
LOCAL REGISTRAR	16A DATE OF DEATH	16B STATE FILE NO. (STATE USE ONLY)	16C LOCAL REGISTRAR - SIGNATURE	17 DATE ACCEPTED FOR REGISTRATION	
			T. J. PRENDERGAST, MD	07/11/2002	

This is a true and exact reproduction of the document officially registered and placed on file in the Office of the Auditor/Controller-Recorder, County of San Bernardino.

DATE ISSUED OCT 08 2005

*Larry Walker*  
LARRY WALKER

Auditor/Controller-Recorder, County Clerk  
San Bernardino County, California

This copy not valid unless prepared on engraved border displaying date, seal and signature of the Auditor/Controller-Recorder.



\*001080580\*

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

# **EXHIBIT C**

CONTINENTAL PALLETS  
8631 S. LIME AVE.  
FONTANA, CA 92235

PERIOD FROM 4-23-07 TO 4-27-07

NAME Ricoberto H. Rivera

40	REG. HR.				
	OT HR.				
TOTAL EARNINGS		1270.00			
F.I.D.A.		78.74			
WITHHOLDING U.S. INCOME TAX		29.17			
STATE INCOME TAX		3.54			
M.D.I.		7.62			
MEDICARE		18.41			
TOTAL DEDUCTIONS		137.48			
NET PAY		1132.52			

EMPLOYEE'S STATEMENT OF EARNINGS  
AND DEDUCTIONS - DETACH AND RETAIN

CONTINENTAL PALLETS  
8631 S. LIME AVE.  
FONTANA, CA 92235

PERIOD FROM 4-30-07 TO 5-4-07

NAME Ricoberto H. Rivera

40	REG. HR.				
	OT HR.				
TOTAL EARNINGS		1270.00			
F.I.D.A.		78.74			
WITHHOLDING U.S. INCOME TAX		29.17			
STATE INCOME TAX		3.54			
M.D.I.		7.62			
MEDICARE		18.41			
TOTAL DEDUCTIONS		137.48			
NET PAY		1132.52			

EMPLOYEE'S STATEMENT OF EARNINGS  
AND DEDUCTIONS - DETACH AND RETAIN

CONTINENTAL PALLETS  
8631 S. LIME AVE.  
FONTANA, CA 92235

PERIOD FROM 5-7-07 TO 5-11-07

NAME Ricoberto H. Rivera

40	REG. HR.				
	OT HR.				
TOTAL EARNINGS		1270.00			
F.I.D.A.		78.74			
WITHHOLDING U.S. INCOME TAX		29.17			
STATE INCOME TAX		3.54			
M.D.I.		7.62			
MEDICARE		18.41			
TOTAL DEDUCTIONS		137.48			
NET PAY		1132.52			

EMPLOYEE'S STATEMENT OF EARNINGS  
AND DEDUCTIONS - DETACH AND RETAIN

# **EXHIBIT D**



## **GMAC Mortgage**

3451 Hammond Ave  
P.O. Box 780  
Waterloo, IA 50704-0780

03/05/08

RIGOBERTO H RIVERA

2195 MARIGOLD WAY

HEMET CA 92545

YOUR IMMEDIATE ATTENTION IS REQUIRED

Account Number 083985083  
Property Address 2195 MARIGOLD WAY

HEMET CA 92545-0000

Dear RIGOBERTO H RIVERA

You were previously notified of your default and the demand for reinstatement on the above account.

Because you have failed to reinstate, your account may be sent to an attorney to initiate foreclosure action. Upon referral, you may incur substantial fees and costs, and the foreclosure status will be reported to credit agencies.

Upon completion of the foreclosure:

- \* You will lose title to the property.
- \* You may be liable for the foreclosure costs, including attorney fees.
- \* You may be personally liable for any remaining balance due.
- \* The foreclosure will be reported to credit agencies and to the Internal Revenue Service.

If you wish to discuss possible alternatives to avoid the foreclosure action, please contact us at 800-850-4622.

Notice - This is an attempt to collect a debt and any information obtained will be used for that purpose. If your debt has been discharged in bankruptcy, our rights are being exercised against the collateral for the above-referenced account, not as a personal liability.

Loss Mitigation Department  
Loan Servicing  
5025

# **EXHIBIT E**





**Balboa**  
Thrift and Loan

P.O. Box 1147  
Chula Vista, CA 91912-1147  
Phone: (800) 354-1160  
Local: (619) 397-7700  
Fax: (619) 397-7693

LOAN NUMBER
02 007365 03

RETURN THIS PORTION WITH PAYMENT	
PAYMENT	675.72
PAST DUE	629.58
LATE CHARGES	202.74
TOTAL PAYMENT DUE	1,508.04
DATE DUE	7-26-08

|||||  
RIGOBERTO H RIVERA  
ESTHER GARIBAY  
2195 MARYGOLD WAY  
HEMET CA 92545

260

EXTRA PRINCIPAL \$ \_\_\_\_\_

TOTAL AMOUNT PAID \$ \_\_\_\_\_

☐ CHECK HERE IF YOUR ADDRESS HAS CHANGED.  
RECORD YOUR NEW ADDRESS ON THE BACK OF THIS FORM.



**Balboa**  
Thrift and Loan

P.O. Box 1147  
Chula Vista, CA 91912-1147  
Phone: (800) 354-1160  
Local: (619) 397-7700  
Fax: (619) 397-7693

ACCOUNT SUMMARY

LOAN NUMBER	CURRENT BALANCE	PREVIOUS BALANCE	DATE PRINTED
02 007365 03	29,978.46	30,257.79	7-11-08

\*\*\*1-800-354-1160\*\*\*

\*\*\*GOLD PHONE\*\*\*

\*\*\*1-800-354-1160\*\*\*

Access your account information Fast, Easy, Secure & Toll Free  
 \*\*\*\*\* You can also make your payment on GOLD PHONE!!!!  
 \*\*\*\*\* Use Western Union Speed Pay Service \*\*\*\*\*  
 \*\* Link to Western Union on line at [www.balboathrift.com](http://www.balboathrift.com) \*\*  
 \*\* GOLD PHONE 1-800-354-1160 \*\*

PROPERTY ADDRESS: 2195 MARYGOLD WAY

260 1 328 6180

CODE	DATE	TRANS AMT	INTEREST	PRINCIPAL	LATE CHARGES	OTHER
600	6-18-08	500.00	395.67	104.33-	0.00	0.00
600	6-18-08	175.00	0.00	175.00-	0.00	0.00
560	7-07-08	33.79-	0.00	0.00	33.79	0.00

NEXT PAYMENT DUE	PAST DUE	REGULAR PAYMENT AMOUNT	LATE CHARGE	TOTAL PAYMENT DUE
7-26-08	629.58	675.72	202.74	1,508.04

These figures do not represent the amount needed to payoff your loan.  
 Call Loan Service for payoff, (800) 748-5684 Opt. # 4



06-09-2008

Rigoberto H Rivera  
Esther Garibay  
2195 Marygold Way  
Hemet CA 92545

Account Number: 02 007365 03

Dear Customer(s):

Your account is past due and we would like to discuss arrangements to resolve the problem. Numerous attempts to contact you have been unsuccessful. We can only help if we know what the problem is. Help us help you protect your credit and resolve the past due status of your account. Contact us today.

I am sure we can work out a mutually satisfactory arrangement to bring your account current. Don't let this matter go any longer. Contact one of our representatives today, toll free, at (888) 754-3341.

The amount due on your account today is \$ 844.67 .

Yours truly,

Ray Preston  
AVP/Manager  
Collection Department

**CERTIFICATE OF SERVICE**

Counsel for Defendant certifies that the foregoing is true and accurate to the best information and belief, and that a copy of the foregoing document has been caused to be delivered this day upon:

Courtesy Copy Court

Copy Assistant U.S. Attorney via ECF Notice of Electronic Filing

Dated: July 18, 2008

/s/ JENNIFER L. COON

Federal Defenders of San Diego, Inc.

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San Diego, CA 92101-5030

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(619) 687-2666 (fax)

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